

## SENATE BILL No. 93

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-2.5.

**Synopsis:** Limit sales tax on gasoline. Provides that the amount of sales tax collected on gasoline or diesel fuel may not exceed the amount of sales tax collected when the pump price is \$3 per gallon. Makes conforming changes.

**Effective:** June 1, 2009; July 1, 2009.

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**Young R Michael**

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January 7, 2009, read first time and referred to Committee on Tax and Fiscal Policy.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## SENATE BILL No. 93

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-2.5-4-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) A person is a  
3 retail merchant making a retail transaction when ~~he~~ **the person** engages  
4 in selling at retail.

5 (b) A person is engaged in selling at retail when, in the ordinary  
6 course of ~~his~~ **the person's** regularly conducted trade or business, ~~he~~  
7 **the person:**

8 (1) acquires tangible personal property for the purpose of resale;  
9 and

10 (2) transfers that property to another person for consideration.

11 (c) For purposes of determining what constitutes selling at retail, it  
12 does not matter whether:

13 (1) the property is transferred in the same form as when it was  
14 acquired;

15 (2) the property is transferred alone or in conjunction with other  
16 property or services; or

17 (3) the property is transferred conditionally or otherwise.

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(d) Notwithstanding subsection (b), a person is not selling at retail if ~~he~~ **the person** is making a wholesale sale as described in section 2 of this chapter.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

(1) the price of the property transferred, without the rendition of any service; and

(2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

For purposes of this subsection, a transfer is considered to have occurred after delivery of the property to the purchaser.

(f) Notwithstanding subsection (e):

(1) in the case of retail sales of gasoline (as defined in IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22), the gross retail income received from selling at retail is:

**(A) the lesser of:**

**(i) the total sales price of the gasoline or special fuel; or**

**(ii) an amount equal to a rate of three dollars (\$3) per gallon of the gasoline or special fuel multiplied by the number of gallons of gasoline or special fuel sold; minus**

**(B) the part of that price attributable to tax imposed under IC 6-6-1.1, IC 6-6-2.5, or Section 4041(a) or Section 4081 of the Internal Revenue Code; and**

(2) in the case of retail sales of cigarettes (as defined in IC 6-7-1-2), the gross retail income received from selling at retail is the total sales price of the cigarettes including the tax imposed under IC 6-7-1.

(g) Gross retail income does not include income that represents charges for serving or delivering food and food ingredients furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion under this subsection only applies if the charges for the serving or delivery are stated separately from the price of the food and food ingredients when the purchaser pays the charges.

SECTION 2. IC 6-2.5-7-1, AS AMENDED BY P.L.1-2007, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2009]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Kerosene" has the same meaning as the definition contained in

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1 IC 16-44-2-2.

2 (c) "Gasoline" has the same meaning as the definition contained in  
3 IC 6-6-1.1-103.

4 (d) "Special fuel" has the same meaning as the definition contained  
5 in IC 6-6-2.5-22.

6 (e) "E85" has the meaning set forth in IC 6-6-1.1-103.

7 (f) "Unit" means the unit of measure, such as a gallon or a liter, by  
8 which gasoline or special fuel is sold.

9 (g) "Metered pump" means a stationary pump which is capable of  
10 metering the amount of gasoline or special fuel dispensed from it and  
11 which is capable of simultaneously calculating and displaying the price  
12 of the gasoline or special fuel dispensed.

13 (h) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

14 (i) "Indiana special fuel tax" means the tax imposed under  
15 IC 6-6-2.5.

16 (j) "Federal gasoline tax" means the excise tax imposed under  
17 Section 4081 of the Internal Revenue Code.

18 (k) "Federal special fuel tax" means the excise tax imposed under  
19 Section 4041 of the Internal Revenue Code.

20 (l) "Price per unit before the addition of state and federal taxes"  
21 means an amount which equals the remainder of:

22 (1) the total price per unit; minus

23 (2) the state gross retail, Indiana gasoline or special fuel, and  
24 federal gasoline or special fuel taxes which are part of the total  
25 price per unit.

26 (m) "Total price per unit" means the price per unit at which gasoline  
27 or special fuel is actually sold, including the state gross retail, Indiana  
28 gasoline or special fuel, and federal gasoline or special fuel taxes which  
29 are part of the sales price.

30 (n) "Distributor" means a person who is the first purchaser of  
31 gasoline from a refiner, a terminal operator, or supplier, regardless of  
32 the location of the purchase.

33 (o) "Prepayment rate" means a rate per gallon of gasoline  
34 determined by the department under section 14 of this chapter for use  
35 in calculating prepayment amounts of gross retail tax under section 9  
36 of this chapter.

37 (p) "Purchase or shipment" means a sale or delivery of gasoline, but  
38 does not include:

39 (1) an exchange transaction between refiners, terminal operators,  
40 or a refiner and terminal operator; or

41 (2) a delivery by pipeline, ship, or barge to a refiner or terminal  
42 operator.

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(q) "Qualified distributor" means a distributor who:

(1) is a licensed distributor under IC 6-6-1.1; and

(2) holds an unrevoked permit issued under section 7 of this chapter.

(r) "Refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.

(s) "Terminal operator" means a person that:

(1) stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate or intrastate pipelines pending wholesale bulk reshipment; or

(2) stores gasoline at a boat terminal transfer that is a dock or tank, or equipment contiguous to a dock or tank, including equipment used in the unloading of gasoline from a ship or barge and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

(t) "**Maximum taxable price per unit before the addition of state and federal taxes**" means an amount that equals the remainder of:

(1) a total price per unit equivalent to the rate of three dollars (\$3) per gallon; minus

(2) the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes that are part of the total price per unit.

SECTION 3. IC 6-2.5-7-3, AS AMENDED BY P.L.146-2008, SECTION 314, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) With respect to the sale of gasoline which is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

(1) **the lesser of:**

(A) the price per unit before the addition of state and federal taxes; or

(B) **the maximum taxable price per unit before the addition of state and federal taxes;** multiplied by

(2) seven percent (7%).

The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

(b) With respect to the sale of special fuel or kerosene which is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant

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shall collect, for each unit of special fuel or kerosene sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

(1) **the lesser of:**

(1) the price per unit before the addition of state and federal taxes; **or**

(2) **the maximum taxable price per unit before the addition of state and federal taxes;** multiplied by

(2) seven percent (7%).

Unless the exemption certificate is provided, the retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

SECTION 4. IC 6-2.5-7-5, AS AMENDED BY P.L.146-2008, SECTION 315, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

(1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.

(2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.

(3) That portion of the amount described in subdivision (2) which represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.

(4) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.

(5) The total amount of money received from the sale of special fuel during the period covered by the report.

(6) That portion of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

(7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax ~~in an amount which equals six and fifty-four hundredths percent (6.54%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes; received by~~ **that the retail merchant was required to collect** from the sale of the gasoline and special fuel **for the period** that is covered by the report. ~~and on which the retail merchant was~~

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~~required to collect state gross retail tax.~~ The retail merchant shall remit that amount regardless of the amount of state gross retail tax which the merchant has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) the amount determined under STEP THREE of the following formula:

STEP ONE: Determine:

(A) the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus

(B) the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

STEP TWO: Subject to subsection (d), for reporting periods ending before July 1, 2020, determine the product of:

(A) eighteen cents (\$0.18); multiplied by

(B) the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.

STEP THREE: Add the amounts determined under STEPS ONE and TWO.

For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.

(d) The total amount of deductions allowed under subsection (c) STEP TWO may not exceed one million dollars (\$1,000,000) for all retail merchants in all reporting periods. A retail merchant is not required to apply for an allocation of deductions under subsection (c) STEP TWO. If the department determines that the sum of:

(1) the deductions that would otherwise be reported under subsection (c) STEP TWO for a reporting period; plus

(2) the total amount of deductions granted under subsection (c) STEP TWO in all preceding reporting periods;

will exceed one million dollars (\$1,000,000), the department shall publish in the Indiana Register a notice that the deduction program under subsection (c) STEP TWO is terminated after the date specified in the notice and that no additional deductions will be granted for retail transactions occurring after the date specified in the notice.

SECTION 5. IC 6-2.5-7-14, AS AMENDED BY P.L.176-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2009]: Sec. 14. (a) Before June 10 and December 10 of each year, the department shall determine and provide to:

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(1) each refiner and terminal operator and each qualified distributor known to the department to be required to collect prepayments of the state gross retail tax under this chapter; and

(2) any other person that makes a request;

a notice of the prepayment rate to be used during the following six (6) month period. The department shall also have the prepayment rate published in the June and December issues of the Indiana Register.

(b) In determining the prepayment rate under this section, the department shall use the most recent retail price of gasoline available to the department.

(c) The prepayment rate per gallon of gasoline determined by the department under this section is the amount per gallon of gasoline determined under STEP FOUR of the following formula:

STEP ONE: Determine the **lesser of:**

(A) the statewide average retail price per gallon of gasoline, excluding the Indiana and federal gasoline taxes and the Indiana gross retail tax; **or**

(B) the maximum taxable price per gallon of gasoline before the addition of state and federal taxes.

STEP TWO: Determine the product of the following:

(A) The STEP ONE amount.

(B) The Indiana gross retail tax rate.

(C) Ninety percent (90%).

STEP THREE: Determine the lesser of:

(A) the STEP TWO result; or

(B) the product of:

(i) the prepayment rate in effect on the day immediately preceding the day on which the prepayment rate is redetermined under this section; multiplied by

(ii) one hundred twenty-five percent (125%).

STEP FOUR: Round the STEP THREE result to the nearest one-tenth of one cent (\$0.001).

**SECTION 6. An emergency is declared for this act.**

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